

Sections 800.81-800.86 Reallocation of Funds and Repeal of Section 800.60

The following rule(s) will be effective September 1, 2000.

The Texas Workforce Commission (Commission) adopts new §§800.81-800.86, amendment to the title of Subchapter C of Chapter 800 and the repeal of §800.60 relating to the Reallocation of Funds, with changes to the text as published in the April 28 issue of the *Texas Register* (25 TexReg 3731).

Background and Purpose: The Commission's allocation rules provide a single set of rules to allocate funds that are subject to Local Workforce Development Board (Board) planning and management. The funds are provided to Local Workforce Development Areas (workforce areas) for the purpose of meeting the workforce training and services needs of eligible populations and for meeting or exceeding statewide performance measures as set forth in the General Appropriations Act. Deobligation and reallocation of funds from one workforce area to another has occurred as necessary at varying points of time, but not pursuant to an established schedule.

The adopted reallocation rules describe an approach that builds upon existing policy and provide a schedule for the reallocation process. The rules enhancements are to: promote effective service delivery and financial planning and management, ensure full utilization of funding, discourage over-expenditure, ensure performance in association with expenditures, announce clear timetables and benchmarks, reallocate funds to populations in need, and promote conditions that avoid the need for reallocation.

Section 800.81 sets forth the purpose, intent, notice and scope provisions. The Commission intends that the level of funding allocated to individual workforce areas be sufficient to ensure full utilization of funding, to ensure compliance with state and federal requirements applicable to the State, to meet the State's federal participation rates, to respond to caseload changes, and to respond to unforeseen demographic or economic changes. For example, this provision would allow the Commission to consider the relationships among different categories of funding in making deobligation and reallocation decisions. Section 800.81(d) clarifies that the rules contained in this subchapter will be effective beginning on September 1, 2000.

Section 800.82 sets forth definitions of the following terms to provide clarity and consistency in how the different categories of funding are managed by the Boards: expenditures, Funds Utilization and Service Level Plan, monthly expenditure report, obligation, program year, and service level report.

Section 800.83 sets forth the provisions relating to the Funds Utilization and Service Level Plan and reports to provide a method of tracking Board expenditures and performance under the Board's Funds Utilization and Service Level Plan.

Section 800.84 sets forth required expenditure, local match, and obligation levels. The Commission anticipates that Boards will expend funds throughout the year consistent with the Boards' Funds Utilization and Service Level Plans. The Commission also expects that each Board shall leverage and secure local funds for workforce training and services and in particular child care to access unmatched federal funds that are contingent upon Boards securing local donations, transfers, and certifications as required by the provisions of the General Appropriations Act.

The levels of reported expenditures by the end of the program year vary by category of funding based on (1) federal statutory requirements, (2) spending cycles, and (3) reasonable operating carryover budgets, based on general business practices to ensure no overspending occurs and no disruptions to client services will result at the end of a program year.

Section 800.85 sets forth provisions relating to deobligation of funds, including the methods for deobligating and the requests to voluntarily deobligate from the workforce areas. Regarding deobligation of Child Care funds, the Commission believes that the number of child care units of service represents the best indicator of performance for purposes of managing funding, because the number of child care units of service directly (1) reflects the amount of funding used for direct child care services and (2) is more accurate for purposes of deobligation than a count of the total number of children served without reference to the frequency of the services provided for the children.

Section 800.86 sets forth the criteria for workforce areas to be eligible for reallocated funds based on the management by the Boards and the method of reallocating for each category of funding.

The Agency provided copies of a draft reallocation policy during the rule development and appreciates the Boards' input throughout the rulemaking process and the Boards' participation in the conference call held to provide representatives of the Boards with an opportunity to respond to the draft policy.

Comments were received from the following Boards: Alamo, Deep East Texas, Gulf Coast, Panhandle, Permian Basin, and West Central; and the City of San Antonio.

Comment: Regarding §800.82(4), one commenter asked if the term obligation as used in the proposed rule encompassed Individual Training Accounts (ITAs). If it did not,

the commenter recommended inclusion of the term Individual Training Account in the definition to ensure that local areas consistently reported this item.

Response: The Commission agrees with the commenter and will amend the rule to include ITAs in the definition for obligation. To clarify further, Boards are encouraged to plan and manage funds, including ITAs, to ensure the effective and full utilization of funds and delivery of services. For example, a Board may fund an ITA for an individual who plans to attend college for two years. However, the individual may decide, after completing the first year or a portion of the first year, to withdraw due to an unforeseen problem. Rather than maintain the ITA until the individual is able to return to college at a later date, Boards may elect to reassign the remaining ITA funds to another individual, and fund the original ITA at a later date. In this way, funds are fully utilized and the greatest number of individuals may be served within a specific time period.

Comment: Regarding §800.83(a)(2), one commenter requested clarification on the term "categories of funding" as it applied to Child Care because the proposed rules alluded to Child Care, other than TDPRS funded child care services, as one category of funding.

Response: The Commission set out the categories of funding in §800.81(c)(1) and (3). Child Care is considered one funding category and TDPRS funded child care services are not.

Comment: Regarding §800.83(b)(1)(A)-(B), the commenter requested reconsideration of the due date for monthly expenditure and service level reports. The commenter recommended changing the due date to "on or before the 28th calendar day of the following month" to allow time for invoices from vendors to be processed and entered into the Child Care Budget and Payment System to better reflect the actual service level and expenditures for the previous month. The commenter requested further clarification on requirements and due dates of final or close-out reports if applicable.

Response: The Commission's intent is to consolidate the required reporting schedule for all categories of funding in the rule. To avoid confusion, the Commission will retain the proposed reporting schedule. Additionally, §800.83(b)(1)(C) of the rule provides for the eventualities the commenter describes by allowing Boards an additional 25 days to make any necessary revisions to their expenditure and service level reports. With regard to the request for clarification on close-out reports, the Commission declines to comment because a close-out report is not cited in the rule. Any close-out requirement for a grant is delineated in the Board Master Contract.

Coment: Regarding §800.84(a), a commenter asked if, under Child Care, non-direct child care items such as expenditures for administration, operations, and quality improvement activities are included in the required monthly expenditure levels. The commenter further asserted that these types of expenditures are not uniformly expensed throughout the year in the same manner as direct child care.

Response: The Commission requires that all Child Care funds, including non-direct child care expenditures, must be included in the required expenditure levels and according to the time periods cited in §800.84. Boards are encouraged to plan, based on the experience they have gained, for the various types of expenses they will encounter throughout a program year through their annual Funds Utilization and Service Level Plan. Boards are also afforded the opportunity to amend their Funds Utilization and Service Level Plans if unforeseen events would significantly impact the Plan, and to revise the required monthly expenditure and service level reports. Boards are given the flexibility and authority to determine how and when they will expend funds according to their own local needs and to report to the Commission.

Comment: Regarding §800.84(a)(3)(A), a commenter suggested that the 96% to 98% Child Care fund expenditure required in the proposed rule was reasonable if the Commission provided a hold harmless provision in the same percentage. The commenter asserted that carryover funding of less than 5% may jeopardize a Board's ability to maintain children in care should its workforce area's allocation for the next year be reduced by a greater percentage. The commenter recommended consideration of an expenditure scale that accounted for future year allocation levels such that Boards would be required to expend 95% of funds if the next year allocation is equal to or greater than the current year allocation. However, if the following year's allocation is lower, the Board's expenditure requirement would also be lowered to ensure continuity of service. A second commenter asserted that because administrative and operational costs are largely fixed, a 98% expenditure requirement would put pressure on Boards to expend funds for quality enhancements that may be rushed and inadequately prepared to avoid disallowed costs. The second commenter recommended amending the rule to provide for a 90% expenditure requirement by the end of the program year, with a 100% expenditure requirement by the end of the second quarter of the succeeding program year. A third commenter recommended lowering the 98% expenditure level for Child Care to 97% and allowing Boards to carry forward up to 3% of their previous year's funding. The third commenter stated that the Boards need flexibility, and a Board should be able to estimate an amount it wishes to carry forward to the next fiscal year in order to provide more continuous service to customers, especially in light of maximum rate increases and substantial increases in enrollment due to a one-time reallocation of funds that affects the amount of funding available to customers the next year. Another commenter agreed with the

intent that allocated funds be fully utilized, but expressed concern about the requirement that Boards meet a 98% expenditure level for child care (unless the workforce area has an allocation of less than \$5,000,000). The second commenter believed that a 2% margin of error was too small given the number of uncontrollable variables in child care.

Response: Federal and State funding sources assume a 100% expenditure level for Child Care. Further, it is vitally important that Boards demonstrate aggressive expenditures to meet the demand for child care as represented by the number of children on the waiting lists. However, the Commission acknowledges the need for management flexibility at the local level and agrees to reduce the required expenditure levels for Child Care to 97%, unless the workforce area has an allocation less than \$5,000,000. If a workforce area has a Child Care allocation of less than \$5,000,000, the Board shall expend at least 95% of the funds for Child Care. The corresponding language regarding carryover is modified accordingly.

Comment: Regarding §800.84(a)(3), one commenter questioned why there were different expenditure levels for Child Care, Choices, and Food Stamps Employment and Training (FS E&T). The commenter suggested 95% for all programs. Another commenter offered the same recommendation for the Choices expenditure level as offered for the Child Care expenditure level.

Response: The required expenditure levels vary by category of funding based on (1) federal statutory requirements, (2) spending cycles, and (3) reasonable operating carryover budgets that are based on general business practices to ensure no overspending occurs and that no disruptions to client services will result at the end of a program year. Federal and State funding sources assume 100% expenditure rates for these funding categories. However, the Commission is encouraging sound financial planning and management that discourages overspending as well as underspending. Therefore, to provide reasonable flexibility to Boards to allow for the variables that influence expenditures, the Commission is requiring a 95% rather than a 100% expenditure rate by the twelfth month for Choices funds. The Commission further amends the proposed rule regarding Child Care expenditures to allow 97% for Child Care, unless the workforce area has an allocation less than \$5,000,000, in which case the Board shall expend at least 95% for Child Care, rather than the respective 98% or 96% expenditure level for Child Care. The required twelfth month expenditure level for the total allocation for the Choices category of funding is 95%, with the ability to spend the remaining five percent within the first four months of the subsequent program year. The Commission encourages Boards to expend 100% of the allocations to provide as much service as possible during any fiscal year. The percentages listed in the rule are minimums.

Regarding FSE&T funds, the Commission only has appropriation authority for FSE&T funds to access an amount of federal funds that the Legislature determines can be reasonably expended within a single fiscal year. Therefore, the Commission has determined that a 100% expenditure rate in the twelfth month for FSE&T funds is reasonable given the limited appropriation and one-year expenditure requirement.

Comment: Regarding §800.84(a)(3), one commenter requested clarification on whether the required expenditure level for Child Care funds, excluding unmatched federal Child Care funds, included obligations. The commenter is concerned that, given the 45-day policy for billing, known expenditure levels at the end of the twelfth month will not represent total expenditures for the year. The commenter further requested clarification on whether expenditure levels for the twelfth month must be "at the end" or "as of" that month.

Response: The Commission wishes to clarify that all expenditures occurring by the end of the twelfth month are inclusive of expenditures not billed until 45 days following the end of the program year.

Comment: Regarding §800.84(a)(3)(B), a commenter questioned whether Boards would be given specific allocations for certain fund codes as a result of the language in this subsection.

Response: The intent of the question is unclear. However, if the commenter is requesting fund category detail beyond that provided in the contract fund summary, this could be considered during the Board Master Contract development process.

Comment: Regarding §§800.84(a)(3)(A) and 800.84(b), one commenter asked if the expenditure requirement for Child Care also applied to Texas Department of Protective and Regulatory Services (TDPRS) and FSE&T child care funds. The commenter also requested clarification on whether TDPRS and FSE&T child care dollars are included in the amount of unexpended funds from one program year that may be expended by the fourth month of the following program year.

Response: Child care services under contract with TDPRS are excluded from all of the provisions of the proposed rules. See §800.81(c)(2)(B). FSE&T funds that are included in the Child Care allocation are subject to the rule provisions governing the FSE&T category of funding that require Boards to meet a 100% expenditure level by the end of the twelfth month following the beginning of the program year.

Comment: A commenter found the expenditure requirements in §800.84(b) and the schedule for pledges and completed donations in §800.84(c) to be reasonable expectations.

Response: The Commission appreciates the support expressed in this comment and agrees with the commenter that both rule sections are fair and reasonable.

Comment: Regarding §800.85(a)(2), two commenters recommended consideration by the Commission of a Board's projected service levels, in addition to current service levels as required by the proposed rule, in determining the degree of funds deobligation. One of the two commenters asserted that this would allow greater flexibility for both the Commission and Boards in determining appropriate deobligation amounts.

Response: The Commission's primary consideration in making deobligation decisions is actual expenditure levels as they compare to a Board's planned expenditure levels. But the Commission may consider service level information (both current and projected) as a method to determine whether a variance in expenditures has been addressed through service level adjustments. Therefore, the Commission will amend the rule to include consideration of projected service levels when making deobligation decisions.

Comment: Regarding §800.85(a)(1), a commenter asserted an inconsistency between this section that refers to a "required" expenditure level and §800.84(a)(1)-(2) that refers to a "planned" expenditure level.

Response: The Commission does not find the inconsistency to which the commenter is referring. The required expenditure level referred to in §800.85(a)(1) corresponds to the 90% and 95% expenditure levels set out in §800.84(a)(1) and (2).

Comment: Regarding §800.86(b)(1), a commenter recommended streamlining the eligibility guidelines for reallocated funds by reducing the criteria Boards must meet to the following four elements. Boards must: (1) be within 90% of planned expenditure and service levels, (2) be current in all reporting, (3) have demonstrated the need and ability to use additional funds, and (4) not be under preventive maintenance and sanctions.

Response: There are several issues raised by the commenter in the recommendation for streamlining workforce area reallocation eligibility requirements.

The first issue dealt with reducing required expenditure levels for each category of funding to 90%. Under the proposed rule, a workforce area could receive reallocated funds for Child Care, Choices, and FSE&T if the Board meets the required 90% of the Board's planned expenditure levels in the first four months of the program year. The Commission believes that Boards would have the ability to manage additional funds with only a 90% expenditure rate by the fourth month. The expenditure levels are

increased in the eighth and twelfth months to ensure full utilization of funding that meets federal and State expectations. A Board failing to meet required expenditure levels at those periods of time would unlikely be able to manage additional funds received through a reallocation.

The second issue centered on the commenter's recommendation that Boards be within 90% of their planned service level. In making deobligation decisions, the primary consideration by the Commission is on current expenditure levels as they compare to the expenditure levels planned by a Board. But the Commission will consider service level information (both current and projected) as a method to determine whether a variance in expenditures has been addressed through service level adjustments, and will modify the rule to include projected service levels.

The Commission believes that (1) demonstrating that expenditures conform to cost category limits for funding and (2) being current with all single audit requirements are key elements in sound financial management. Boards not demonstrating sound financial management should not be eligible for reallocated funds.

Comment: One commenter questioned the policy disparity between the proposed rule that requires Boards to secure funds to match federal resources and the Commission's Financial Manual for Grants and Contracts (FMGC) which disallows fund-raising. The commenter further stated that the term "leveraging local resources" may not be substituted as it is used by the Commission synonymously with "fund-raising". The commenter also asserted that the fund-raising requirement is difficult on small Boards and competing for State monies creates a staffing issue for all Boards.

Response: The Commission agrees that the Office of Management and Budget (OMB) Circulars and the Agency's Financial Manual prohibit "fund-raising," and would clarify that the securing of local matching funds is not a prohibited activity that would fall under the definition of "fund-raising." Specifically, in terms of child care, the federal statute at 42 U.S.C.A. §618(a)(2)(C) provides for payment to eligible States of an amount based on the federal medical assistance percentage (FMAP) based on the State's expenditures for child care. The federal regulations at 45 CFR §98.53 provide that "an expenditure in the State may be used to secure matching funds if it consists of (1) public funds that are transferred from another public agency to the [Texas Workforce Commission]; (2) public funds that are certified by the contributing public agency as representing expenditures eligible for federal match; or (3) donated funds from private sources." Collecting donations of private funds to secure local matching funds is also recognized in 45 CFR §98.53(f), which provides that "donated funds need not be transferred to or under the administrative control of the Agency in order to qualify as an expenditure eligible to receive federal matching funds. They may be given to the entity designated by the State to receive donated funds pursuant to

§98.16(c)(2)." The provision referenced by the commenter is a prohibition against paying with federal funds the costs of "organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions." Fund-raising as prohibited is typically associated with political activity or other activities beyond securing local matching funds as authorized under the Child Care and Development Fund statute and regulations. The broad prohibition against paying with federal funds the costs of "organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions" does not appear to apply to the incidental costs required to secure local matching funds. The reasoning contained in this response is also applicable to match fund development in the Welfare-toWork program.

The Commission agrees, however, to clarify the language contained in the rule. The term "fund-raising" is being replaced with the phrase "securing local matching funds," which is consistent with federal statute and regulations and is not a prohibited activity. The Commission also notes that Boards may use State funds, program income such as parent fees, and donated funds to secure match funds.

Comment: Regarding §800.86(b), two commenters requested clarification on the definition of "timely" in reference to receiving reallocated funds.

Response: The Commission will notify Boards of eligible workforce areas in writing with a clearly defined time frame for submitting reallocation requests.

Comment: Regarding §800.86(b)(3)(c)(1)(D), a commenter requested a definition for the term "other related factors."

Response: In determining the amount to be reallocated, the Commission may consider, among other things, "related factors as necessary to ensure that funds are fully utilized." The Commission retains the right to consider anything it deems necessary in determining the amount to be reallocated. Examples of related factors that the Commission may consider are caseload changes, unforeseen demographic or economic changes, or the relationships among different categories of funding.

Comment: Regarding §800.86(b)(1)(H), a commenter asked if the reallocation eligibility requirement that a Board not be under preventive maintenance or sanctions applied to all workforce development programs or just to child care.

Response: The reallocation eligibility requirement that a Board not be under preventive maintenance or sanctions applies to all funds provided to a workforce area under a contract between the Board and the Agency that are listed under §800.81(c)(1)

of the proposed rule. However, the rule does not require that a Board under preventive maintenance or sanctions for one category of funding be ineligible to receive funds reallocated for another category of funding. For example, a workforce area with a Board under preventive maintenance or sanctions for Choices is ineligible only for reallocated Choices dollars, but could be eligible for other categories of funding such as Child Care.

Comment: Regarding §800.86(1)(B), the commenter requested clarification on the difference between the 110% expenditure limit on planned funds utilization versus the 100% limit on the workforce area's allocation.

Response: The 110% refers not to the total annual allocation for a workforce area received by a Board but, rather, to the expenditure limit for one of the three applicable time periods set out in §800.84. While the Commission discourages overspending and underspending, it recognizes that, within a given period of time, Boards may need to expend more than 100% of their planned expenditures. However, the Commission expects that Boards will manage their funds such that, by the end of the program year, total annual expenditures will not exceed 100%. The Commission intends to provide as much local flexibility as possible while at the same time discouraging over- or under-utilization of funds.

The repeal is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

§800.60. Reallocation of Funds.

The new sections are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

§800.81. General Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery and financial planning and management, to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) Intent. Notwithstanding any other provision of the rules contained in 40 TAC, Part 20, relating to the Texas Workforce Commission, except for funding for Welfare-to-Work, WIA Adult, WIA Youth and WIA Dislocated Worker, the level of funding

allocated to a workforce area may be modified or reallocated by the Commission for one or more of the following reasons:

- (1) to ensure full utilization of the funding;
- (2) to ensure compliance with State and federal requirements applicable to the State;
- (3) to meet the State's federal participation rates;
- (4) to respond to caseload changes; or
- (5) to respond to unforeseen demographic or economic changes.

(c) Scope.

(1) Subchapter C of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:

- (A) Child Care;
- (B) Choices;
- (C) Food Stamp Employment and Training;
- (D) WIA Adult;
- (E) WIA Dislocated Worker; and
- (F) WIA Youth.

(2) Subchapter C does not apply to funds provided to workforce areas under a contract between the Board and the Commission for the following unless otherwise indicated:

- (A) WIA Rapid Response for Dislocated Workers;
- (B) Child Care services funded under contract with the Texas Department of Protective and Regulatory Services; and
- (C) Employment services, 29 U.S.C.A. §49 *et seq.*

(3) Sections 800.81, 800.82, and 800.83 of Subchapter C of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for Welfare-to-Work, 42 U.S.C.A. §603 *et seq.*

(d) Effective Date. Subchapter C shall be effective on September 1, 2000, and applicable to any funds allocated to workforce areas or not yet expended by the Boards on or after September 1, 2000.

§800.82 Definitions.

In addition to the definitions in §800.2, the following terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

- (1) Expenditures — Costs incurred for goods and services that cause decreases in net financial resources.
- (2) Funds Utilization and Service Level Plan — A Board plan that includes:

(A) a funds utilization schedule for accrued expenditures that demonstrates that each allocation shall be fully utilized within the Funds Utilization Plan period established by the Commission, and

(B) a service level schedule that lists the number of enrollments or other activities as may be determined by the Commission, to be completed during a specified period, and that demonstrates achievement of performance benchmarks consistent with the Board's contract performance goals and integrated workforce training and services plan.

(3) Monthly expenditure report — A report submitted by a Board that contains information regarding services for each category of funding allocated by the Commission, and in which the Board lists expenditures by category of funding, as referenced in §800.83(b) of this subchapter, relating to Funds Utilization and Service Level Plan and Reports, for each month of the reporting period.

(4) Obligation — A debt, including Individual Training Accounts as described in the Workforce Investment Act, established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a program year, and which will be performed within the program year or within 90 calendar days after the end of a program year. Any obligation periods extending beyond 90 days after the program year shall be prorated using the straight-line method or other acceptable proration method that accurately matches benefits received with dollars included as obligations.

(5) Program year — The twelve-month period applicable to the funding as referenced in §800.83(b) of this subchapter, relating to Funds Utilization and Service Level Plan. The program years are as follows:

(A) Child Care: September 1 - August 31;

(B) Choices: September 1 - August 31;

(C) Welfare-to-Work: September 1 - August 31;

(D) Food Stamp Employment and Training: September 1 - August 31;

(E) WIA Adult: July 1 - June 30;

(F) WIA Dislocated Worker: July 1 - June 30; and

(G) WIA Youth: July 1 - June 30.

(6) Service level report — A Board report that is submitted periodically to the Commission, with information in a format determined by the Commission, on the number of:

(A) Child Care units of service, as well as pledged and completed local funds as specified in 40 TAC §809.20;

(B) Choices individuals participating in Temporary Assistance for Needy Families component activities, and the number of Choices participants meeting minimum work requirements who are included in calculating federal work participation rates;

(C) Welfare-to-Work participants served;

(D) Food Stamp Employment and Training mandatory work registrants served and Able Bodied Adults Without Dependents (ABAWDs) served;

(E) WIA Adult participants who received a WIA service;

(F) WIA Dislocated Worker participants who received a WIA service; and

(G) WIA Youth participants who received a WIA service.

§800.83. Funds Utilization and Service Level Plan and Reports.

(a) Planning.

(1) A Board shall annually on a schedule as determined by the Commission submit for approval a Funds Utilization and Service Level Plan that contains information regarding each category of funding as specified by the Commission, including the categories listed in § 800.81(c)(1) and (3). A Board shall include the Funds Utilization and Service Level Plan as part of the Board's integrated workforce training and services plan, as well as part of the Board's annual plan modifications.

(2) A Board shall ensure that the plan describes the funds utilization and service levels for each of the categories of funding specified by the Commission for each corresponding program year.

(3) A Board of a workforce area which has been subject to deobligation of funds or a Board of a workforce area receiving reallocated funds shall submit to the Commission for approval a revised Funds Utilization and Service Level Plan within 45 days of notification of the Commission's action to deobligate or reallocate. A Board may also amend its Funds Utilization and Service Level Plan if an unforeseen event would significantly impact a Board's plan.

(b) Reporting.

(1) A Board shall submit reports that list information as required by the Commission for the reporting period as follows:

(A) a monthly expenditure report on or before the 20th calendar day of the following month;

(B) a monthly service level report on or before the 20th calendar day of the following month; and

(C) any necessary revision to the monthly expenditure report and service level report pursuant to this section §800.83 within 25 calendar days after the original due date of the report.

(2) The Commission may require that a Board amend expenditure reports and service level reports as the result of Commission monitoring reviews or audits. Amended reports may be the basis for deobligation.

§800.84. Required Expenditure, Local Match, and Obligation Levels.

(a) For Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, and Food Stamp Employment and Training funds provided by the Commission, a Board shall meet the following expenditure levels:

(1) by the end of the fourth month following the beginning of the program year, reported expenditure of at least 90% of the planned expenditure level in the Funds Utilization and Service Level Plan;

(2) by the end of the eighth month following the beginning of the program year, reported expenditure of at least 95% of the planned expenditure level in the Funds Utilization and Service Level Plan; and

(3) by the end of the twelfth month following the beginning of the program year, reported expenditure levels of the total annual allocation of:

(A) at least 97% for Child Care, unless the workforce area has an allocation of less than \$5,000,000, in which case the Board shall expend at least 95% for Child Care;

(B) at least 95% for Choices; and

(C) 100% for Food Stamp Employment and Training.

(b) For Child Care funds (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds) which do not exceed 3% of the total contracted amount or 5% for workforce areas with allocations of less than \$5,000,000, and Choices funds which do not exceed 5% of the total contracted amount, that are unexpended by the close of the twelve-month program year, a Board shall expend funds by the end of the fourth month of the next program year. The Commission may

deobligate and reallocate, as provided in §§800.85 and 800.86 of this subchapter, relating to Deobligation of Funds and Reallocation of Funds, unexpended balances not expended in accordance with this subsection.

(c) For unmatched federal Child Care funds that are contingent upon a Board securing local match funds, a Board shall meet the following performance requirements:

(1) by the end of the fourth month following the beginning of the program year, pledged donations, transfers and certifications totaling at least 100% of the amount the Board needs to secure in order to access all of the unmatched federal Child Care funds available to the workforce area;

(2) by the end of the eighth month following the beginning of the program year, completed donations, transfers and certifications totaling at least 60% of the amount the Board needs to secure in order to access all of the unmatched federal Child Care funds available to the workforce area; and

(3) by the end of the twelfth month following the beginning of the program year, completed donations, transfers and certifications totaling at least 100% of the amount the Board needs to secure in order to access all of the unmatched federal Child Care funds available to the workforce area.

(d) For WIA Adult, WIA Dislocated Worker, and WIA Youth funds, a Board shall meet the following reported levels for each of these categories of funding:

(1) by the end of the twelfth month following the beginning of a program year, obligation of at least 80% of the allocation for each category of funding less any amount reserved up to 10% for costs of administration; and

(2) by the end of the 24th month following the beginning of a program year, expenditure of 100% of the allocation for each category of funding.

(e) If a Board fails to achieve required expenditure, local match, or obligation levels as indicated in this section, the Commission may deobligate funds from the workforce area.

§800.85. Deobligation of Funds.

(a) For deobligation of Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, and Food Stamp Employment and Training funds, the Commission may, for the category of funding:

(1) deobligate all or part of the difference between a Board's actual expenditure level and the required expenditure level described in §800.84(a) and (b) of this subchapter, relating to Required Expenditure, Performance and Obligation Levels, as applicable for each category of funding for that period; and

(2) consider a Board's current and projected service levels in determining to what degree to deobligate funds.

(b) For deobligation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may deobligate all or part of the difference between a Board's actual level of secured match and the required level of secured match to be met by the Board described in §800.84(c) of this subchapter, relating to Required Expenditure, Local Match, and Obligation Levels.

(c) For deobligation of WIA Adult, WIA Dislocated Worker, and WIA Youth funds, the Commission shall deobligate funds from each of these categories of funding as follows:

(1) after the end of the twelfth month following the beginning of a program year, any unobligated funds which exceed 20% of the allocation for WIA Adult, WIA Dislocated Worker, or WIA Youth for that program year, less any amount reserved up to 10% for costs of administration; and

(2) after the end of the 24th month following the beginning of a program year, any unexpended funds of the program year allocation for WIA Adult, WIA Dislocated Worker or WIA Youth.

(d) For voluntary deobligation, a Board may submit a written request that the Commission deobligate a portion of the workforce area's allocation for one or more categories of funding. The Commission shall determine whether to approve requests for deobligation.

§800.86. Reallocation of Funds.

(a) Combining Funds. The Commission shall combine the funds deobligated from workforce areas by categories of funding for each obligation period and may reallocate funds to an eligible workforce area.

(b) Eligibility. For a workforce area to be eligible for reallocation of funds relating to a category of funding, a Board shall meet the additional criteria set forth in this section that is applicable to the category of funding and shall submit a timely written

request to receive reallocated funds listing the maximum amount of reallocated funds which the Board intends to utilize.

(1) For a workforce area to be eligible for a reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board securing local funds), Choices, and Food Stamp Employment and Training funds, a workforce area's Board shall:

(A) have met expenditure levels as required by §800.84(a) and (b), as applicable, for that period;

(B) have expended at the levels outlined in Section 800.84, but not more than 110% of the planned funds utilization level for funding for the applicable expenditure period and program year, and not more than 100% of the workforce area's allocation for the category of funding;

(C) be within 90% of the planned service level;

(D) have demonstrated that expenditures conform to cost category limits for funding;

(E) have demonstrated the need for and ability to use additional funds;

(F) be current on expenditure and service level reporting;

(G) be current with all single audit requirements; and

(H) not be under preventive maintenance or sanctions.

(2) For a workforce area to be eligible for a reallocation of the unmatched federal Child Care funds that are contingent upon a Board securing local funds, the workforce area's Board shall have met the level for securing local match requirements set out in §800.84(c) of this subchapter, relating to Required Expenditure, Local Match, and Obligation Levels, for the program year from which funds were deobligated.

(3) For a workforce area to be eligible for a reallocation of WIA Adult, WIA Dislocated Worker and WIA Youth funds, to be eligible for a reallocation, the workforce area's Board shall have met the obligation or expenditure requirement set out in §800.84(d) of this subchapter, relating to Required Expenditure, Local Match, and Obligation Levels, for the category of funding for the program year from which funds were deobligated.

(c) Reallocation.

(1) For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board securing local funds, Choices, and Food Stamp and Employment and Training funds, the Commission may reallocate funds to an eligible workforce area based on the applicable allocation method set forth in Subchapter B of this chapter relating to Allocation and Funding. In determining the amount to be reallocated, the Commission may also consider:

(A) the amount specified in the Board's timely written request for additional funds;

(B) the ability of the Board to expend funds to address the need for services in the workforce area;

(C) the financial and service of the Board performance during the prior program year; and

(D) related factors as necessary to ensure that funds are fully utilized.

(2) For WIA Adult, WIA Dislocated Worker and WIA Youth funds, the Commission shall reallocate funds as provided in WIA §§ 128 and 133.